Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1994

TOMMIE L. TOLIVER

PETITIONER

VS.

SULLIVAN DIAGNOSTIC

TREATMENT CENTER, (SDTC)

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES

COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR WRIT

OF CERTIORARI

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PETITIONER, Pro Se

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15 pp

I

QUESTIONS PRESENTED

Is the decision of the District Court reversible where the findings were made on disputed facts and on motion for summary judgement and where the party opposing a (the) summary judgement motion was denied the right to (a) full evidentiary hearing on all genuine issues of material facts?

II

LIST OF PARTIES

All parties to this case are listed in the caption of the case.

TABLE OF CONTENTS

page

QUESTIONSPRESENTED.....i

LIST OF PARTIES.....ii

LIST OF AUTHORITIES-CASES

BARNETT v. W.T. GRANT CO.

(1975, CA 4NC) 581 FD 543

EEOC DECISION NO. 77-4 (1977) CCH EED DECISION #6667

McDONNELL DOUGLAS CORP v. GREEN

411 US 792, 1973

RICH v. MARTIN MARIETTA CORP.

(1975 CA10 COLO) 522 Fd 333

SENTER v. GENERAL MOTORS

(1976 CA6 OHIO) 532 Fd 511 CERTDEN 429 US 870, 5DL Ed 15097 S 182

page

U.S. v. J. B. WILLIAMS CO.

C. A. 2D 1974. 498 F2 414

WATKINS v. NORTHWESTERN TRACTOR PULLERS ASS'N INC.

C. A. 6th 1980. 630 Fed 1155

OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISION	2
STATEMENT OF THE CASE	3
REASON FOR GRANTING WRIT	10
CONCLUSION	11

No._____

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OCTOBER TERM, 1994

TOMMIE L. TOLIVER, PETITIONER

V.

SULLIVAN DIAGNOSTIC TREATMENT CENTER, (SDTC)

REPSONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

Petitioner, Tommie L. Toliver, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the (Second Circuit) affirming the judgment and opinion of the District court (Southern District of New York) for summary judgment when findings were made on disputed facts and this petitioner was denied the right to a full evidentiary hearing on all genuine issues of material facts.

OPINIONS BELOW

The opinion of the Court of appeals appears in Appendix A. to this petition. The opinion of the District Court for the Southern District of New York appears in Appendix B.

JURISDICTION

The Court of Appeals in this matter was filed on 24 March 1994 and is set forth in Appendix A. This court's jurisdiction is invoked under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000 lt. sec., 42 U.S.C. s 1981 and the N.Y. Executive Law ss 292-301 ("Human Rights Law").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14 to the United States Constitution set forth in Appendix C.

STATEMENT OF THE CASE

On 17/18 June 1987 (midnight) petitioner was met at the door of his place of employment by the supervisor of the house, Sky Yorder, and told that Dennis (Dennis Raymond), and Administrator of SDTC, says that you are fired.

Petitioner had worked for SDTC since mid 1986 as a counselor on the evening shift (10:30/11:00 PM to 7:00/7:30 AM) at the request of supervisor Ann Brawley with the understanding that work at SDTC was a second job and (that) petitioner's day job was with another employer, New Horizon.

In early 1987 petitioner sought to be promoted to the position of program supervisor, was interviewed by Dennis Raymond but denied the position. A white male from outside the Agency (SDTC) was hired.

In April 1987 petitioner's day job (building) was destroyed by fire. On the day after the fire petitioner requested of his supervisor, Ann Brawley, that he would resign, request a leave of absence, or be allowed to leave work two hours early two days a week to maintain his commitment to New Horizon (his day job). Ann Brawley granted permission (request) to leave two hours early and, in her words, make up the time.

In mid May 1987 I advised Ms. Brawley (it was public information) that new Horizon would not rebuild/reopen. People who worked there would not have a job after 30 June 1987. Shortly thereafter petitioner was told by Brawley that Raymond says you (Toliver) can no longer leave early two days a week. Subsequently, petitioner called in sick to SDTC. On 14/15 June 1987 petitioner was summoned by Raymond's office for a meeting and was told by Raymond that if you

call in sick again you are required to bring in a doctor's note, and you are required to bring a doctor's note for the previous call in(s). Petitioner submitted that if he should have to call in sick again that he would see a doctor and bring a doctor's note. Petitioner returned to work "station" and worked to the end of his shift 7:00/7:30 AM. Petitioner was off 15/16 and 16/17 June 1987. When petitioner reported for work on 17/18 June 1987, he was met at the door by Yorder and told you (Toliver) are fired (on Dennis Raymond's orders). The Court held (affirmed the decision of the District Court) that petitioner failed to prove a prima facie case, that the position for which Toliver sought promotion to was filled by a white applicant (male from outside the Agency) with prior supervisory experience. Toliver argued before the Court of Appeals for a Second Circuit that a prima facie was established - that Toliver's qualifications were equal to or superior to that

of a person hired. Copy of Toliver's resume appears as Appendix D. Copy of resume of person hired appears as Appendix E. See McDonnell Douglas Corp. v. Green 411 US 792, 1973; Rich v. Martin Marietta Corp. (1975 CAIO Colo) 522 F2d 333. And that Toliver discussed with Raymond (at the interview) his supervisory experience including as Acting Chief Executive Officer and Deputy Director of Sullivan County's Anti-poverty Agency, (Toliver) supervised six unit supervisors, the Director of a pre-school program, serving about 90 pre-school children, and overall, supervised about 65 staff workers. Further, Toliver argued that of the 24 program supervisors hired from 1983 to late 1991 there was one black, a female, and that person did not meet the minimum qualification, and, of those 24 (program supervisors) only 10 were qualified mental retardation professionals, QMRP. SDTC job description/qualifications appear as Appendix F. List of program supervisors appears as Appendix

G. Further, Toliver argued that it was the policy/practice of SDTC to promote form within as a first step - that each witness called by Toliver and who gave deposition (all of whom were either employed by SDTC or former employees of SDTC) stated that they had been promoted one or more times. Page 8 of EB of Sky Yorder appears as Appendix H. Page 8 of EBT of Raymond appears as Appendix I. Page 13 of EBT of J. Stanton appears as Appendix J. Page 8 of EBJ of Brawley appears as Appendix K. Page 7 of EBT of D. Clark appears as appendix L. Also, the defense attorney proceed to tell the witness that Toliver called when not to answer questions, stated that he, Rickles, represented my witnesses. Page 5 of EBT of J. Stanton appears as appendix M. Toliver further argued that SDTC could not properly utilize prior supervisory experience involving the population served in evaluating applicants for supervisory positions - that supervision refers to personnel

supervision not the population served. And (that) this was a continuation of a pattern of discrimination against blacks by use of subjective criteria. See EED Decision No. 77-14 (1977)CCH EED Decision #6667, and:

> Plaintiff's statistical challenge to company's supervisory promotions was strengthened by fact that company had no objective criteria for hiring of supervisors, and nonobjective standards are always suspect because of their capacity for making racial discrimination (objective standards that are disregarded has the same effect as nonobjective standards) parenthesis added. Barnett v. W. T. Grant Co. 1975, CA 4NC 518 Fd543.

Also see Senter v. General Motors (1976 CA6 Ohio) 532 F2d 511, Certden 429 US 870.50L Ed 2D150 865182. Toliver argued that defendant totally failed and refused to offer a defense. An application requesting the name(s) of the person/persons who would represent SDTC/defend this action was not responded to. Copy of said application appears a(as) Appendix N.

On 31 May 1991 the Honorable Judge Broderick ordered, verbally, the defense attorney to provide him (Toliver) with the names (of agents of SDTC) so that he (Toliver) can take deposition - no such names were ever provided. In 15 July 1991 Magistrate Judge Fox ordered the defense attorney to provide name(s) of persons who would represent SDTC - no such names were ever provided. Toliver further argued that the only denial of the violation complained of has been an answer to the complaint by the defense attorney on an application for summary judgement by the defense attorney.

> Evidence S. 904.3 - Job Discrimination: defendant's rebuttal of a <u>prima facie</u> case 8a, 8b. After the plaintiff in the job discrimination under Title VII of the Civil (Rights) Act 1964 (42 U.S.C.S. SS2000e et sta) has provided a <u>prima facie</u> case of discriminatory treatment, the burden then shifts to the defendant is to rebut the presumption of discrimination that the prima facie case has raised by producing evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason;...the

> defendant cannot meet (its) burden through articulation...such as an answer to complaint or an argument of counsel.

Further, that an affidavit submitted by Toliver disputes the statements made in an affidavit by Raymond. Toliver's affidavit appears as Appendix O. Raymond's affidavit appears as Appendix P.

> The District Court may not make findings of disputed facts on a motion for summary judgement. Watkins v. Northwestern Ohio Tractor Pullers Ass'n Inc. 6th 1980, 630 F3d 1155.

Further, Toliver's request for a hearing on the motion (for summary judgement) was denied. Toliver's request for a hearing on motion for summary judgement appears as Appendix Q.

> The party opposing a motion for summary judgement has the (right) to a full evidentiary hearing on all genuine issues of material facts. U.S. v. J.B. Williams Co. CA 2d 1974. 498 F2 414.

REASONS FOR GRANTING WRIT

Certiorari should be granted for two reasons:

1) The petitioner represents an issue that if not addressed would render the Civil Rights Act of 1964, Title VII, unless- that (a) charge of its violation need not be defended; and, 2) the adverse party would not have access to the right to have his case heard by a jury.

CONCLUSION

For the reasons set forth above, in the body of this petition, a Writ of Certiorari should be granted to review the judgment and opinion of the Court of Appeals in this matter.

Dated 21 July 1994

Respectfully submitted,

Tommie L. Toliver

Petitioner pro se